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SUBJECT: IPR ROUNDTABLE 2: IMPROVED PROSECUTION OF IPR CASES
NEEDED

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REF: MANILA 02813

¶1. (U) Summary: On September 13, Embassy conducted its second IPR roundtable to review IPR issues with US company reps and GRP officials. Roundtable participants praised the government for recent initiatives, notably its crackdown on pirated optical media goods, but stressed the need to prosecute IPR violators and create an effective deterrent effect. The Director General of the Intellectual Property Office (IPO) presented current GRP initiatives to coordinate better IPR enforcement and to support the creation of specialized courts and prosecutors for IPR cases. Private sector representatives applauded the creation of IP courts, but emphasized the need for effective training of court personnel and streamlining procedures to avoid duplicating the bottlenecks now encountered in the commercial courts where IP cases are now tried. Feedback during a follow-up private sector meeting revealed mixed opinions about the recent progress and future prospects for greater IPR enforcement. End Summary.

¶2. (U) As a follow-up to the June 7 IPR roundtable with representatives of U.S. IP rights holders (reftel), Embassy conducted an expanded "Roundtable 2" on September 13, with over 60 private sector representatives and eight key GRP IPR officials, including IPO Director General Adrian Cristobal. The Charg, Cristobal, and representatives from three industry groups delivered remarks, followed by an open forum discussion between participants and GRP IPR officials on current priorities for improving IPR protection, paying particular attention to the creation of specialized courts and prosecutors for IPR cases. The roundtable concluded with a separate session for U.S. business representatives and Embassy officers.

¶3. (U) In his opening remarks, the Charg acknowledged recent GRP progress such as the passage and implementation of the Optical Media Act in 2004 and stepped up enforcement actions this year, but he highlighted several areas where further progress is needed. Most importantly, the GRP must create a more credible deterrent to piracy by improving the prosecution of IPR violators, he said. In addition, he noted the needs for legislation to implement WIPO treaties and for better education and training for IPR enforcers. While stressing the U.S. interest in IPR issues, the Charg underscored the importance of f IPR protection to encourage investment and economic growth in the Philippines.

RECENT PROGRESS

¶4. (SBU) Several company representatives praised the Optical Media Board (OMB) members and its chairman, Eduardo Manzano, for their efforts to step up enforcement actions on optical disc piracy. A representative of the International Federation of Phonographic Industries (IFPI) noted a dramatic improvement during the past year in the number of raids OMB conducted, a more rigorous program of plant inspections, and greater transparency in the seizure of pirated goods. Other representatives of the optical media industry, including representatives of film and software industry groups and individual companies, echoed this assessment.

¶5. (U) Cristobal described government initiatives to improve coordination of IPR enforcement and raise public awareness of the importance of IPR for domestic industry and economic development. He described how the IPO has strengthened its role in leading interagency coordination on IPR protection. IPO is also tabulating information about IPR enforcement actions and prosecutions for posting on the IPO website (www.ipophil.gov.ph). (Note: The Philippine Department of Justice (DOJ) recently ordered a nationwide inventory of IPR cases currently in process as part of this effort, but the data collection is proceeding slowly. End Note.) The IPO is also improving awareness of IPR within the GRP and advocating IPR protection with other executive

agencies, according to Cristobal.

16. (U) Cristobal added that the IPO is working to increase its role in offering alternative mechanisms to adjudicate cases and impose penalties on IPR violators. Several company representatives expressed interest in using these mechanisms if they could be guaranteed that the procedures would progress quickly and that fines and penalties imposed will be enforced. Cable TV industry representatives took issue with the claim that these administrative procedures by regulators are a viable alternative to filing cases in court, saying that rights holders often face the same types of delays and inequities with these mechanisms as they do with traditional courts. They noted that the National Telecommunications Commission (NTC) has failed to take action on a complaint filed against a rogue cable operator over one year ago, even though the attorneys for that operator have simply failed to appear at scheduled hearings. They also pointed out the difficulty they face from a lack of effective interagency coordination on these procedures. According to participants, regulators, such as NTC for cable TV or the Bureau of Food and Drugs (BFAD) for pharmaceuticals, often deflect or deny jurisdictional authority over alleged IPR violations, but IPO insists it cannot intervene in licensing issues controlled by another agency. Cristobal said he is working to clarify the division of responsibility between the various agencies. For example, an IPO agreement with the NTC may allow the IPO to adjudicate 20 cases that have languished under NTC's jurisdiction.

WEAK JUDICIARY INHIBITS PROSECUTION

17. (SBU) Several participants underscored the extreme difficulties they have encountered in prosecuting cases and the ease with which IPR violators exploit judicial weaknesses to dismiss or delay cases filed against them. One participant summed up the feelings of the group: "The judiciary is the crux of the problem." The IFPI representative cited several specific cases where search warrants were quashed for questionable reasons or cases were delayed for years with no trial. He noted that years of attempted prosecutions have failed to yield one single conviction, except when the defendant pleaded guilty to lesser charges. Pharmaceutical and cable industry representatives also reported little success in prosecuting cases in the courts. Roundtable participants emphasized the importance of the improvements in enforcement actions, but urged GRP officials to move beyond the mentality that enforcement actions are sufficient. The time has come, they said, to follow through more effectively with prosecutions. It is also vital, they said, to focus not only on low-level infringers, such as street vendors, but to move up the chain to the "people behind the establishments" and the kingpins. Participants urged improved coordination between Philippine authorities and their counterparts in neighboring countries; they claimed that much of the money backing pirate operations here comes from abroad.

18. (SBU) Cristobal, noting that in the Philippine system an aggrieved party must pursue prosecution in private cases such as IPR violations, replied that enforcement agencies have sometimes been frustrated when rights holders refused to pursue prosecution of arrested IPR violators. Participants countered this claim by saying they often choose not to pursue prosecution because -- based on past experience -- they have no faith in the ability of the DOJ successfully to prosecute a case or the ability of the Philippine courts successfully to conduct an IPR trial. One participant retorted, "I choose not to pursue prosecution because I know it will never go to court. There is no point in throwing good money away." Another responded to Cristobal, "If you had ever pursued a case through the DOJ and the courts, you would know what a disincentive it is." Participants pointed out that their reluctance to pursue prosecution is rational behavior given the costs of litigation and the minimal likelihood of successful prosecution. Cristobal also urged rights holders to share more proactively information about infringers with GRP authorities. Rights holders responded that they most often do not share information because doing so normally compromises any enforcement actions they may be contemplating. They said they have little to no trust in the operational security of GRP enforcement agencies.

19. (U) Industry representatives also raised concerns over the failure of customs and immigration officials to stem the import of pirated goods and pursue charges against foreign IPR violators arrested in the Philippines. Participants noted that most pirated goods are imported and foreigners involved are normally processed on immigration charges, and later released or deported. Participants claimed that deportation sets these infringers free, so many of these same individuals return illegally to the Philippines and resume IPR violation under new identities. Cristobal explained that the IPO is trying to work with the customs and immigration services as well as the Philippine Economic Zone Authority (PEZA) to address these issues.

PHARMACEUTICAL PATENTS UNDER THREAT

110. (U) The Pharmaceutical and Healthcare Association of the Philippines (PHAP) expressed concern over proposed legislation and administrative decisions that may reduce IPR protection of the pharmaceutical sector. One proposal to expand the GRP's parallel importation scheme for medicines in competition with exclusive distributors will likely increase the proliferation of counterfeit medicine. Two bills recently proposed to shorten pharmaceutical patents from 20 to 10 years also concern the industry. PHAP questioned the legality of Department of Health Administrative Order No. 85, which allows the import of branded products without the consent of brand owners. PHAP emphasized the importance of IPR protection to ensure incentives for further drug development and underscored the industry's willingness to support affordable access to medicine.

SUPPORT FOR SPECIALIZED COURTS AND PROSECUTORS

111. (SBU) Participants expressed support for recent moves to establish specialized courts and prosecutors for IPR cases; one called it a "massive step forward." Following discussion of this issue at the last roundtable (reftel), private sector groups and the Joint Foreign Chambers of Commerce joined the IPO in lobbying successfully for the creation of dedicated IPR courts. Cristobal expects IP courts to be operational by the end of 2005. IPO will help to provide training for judges and court personnel and it will consult with the Supreme Court to plan the phased transfer of more than one thousand outstanding IPR cases to these courts. Cristobal underscored the opportunity provided by these courts to restore some confidence in the prosecution IPR cases. IFPI, offered to provide support for the training of IP court personnel and others also said they would look at ways of assisting IPO on capacity building for court personnel and DOJ prosecutors. Cristobal thanked them for their offers and welcomed involvement with law enforcement agencies, but appeared reluctant to accept direct private sector involvement in setting up the IP courts. (Note: Embassy, through USAID, is evaluating how we could help package these offers of assistance into a form that would maximize their impact and allay GRP conflict of interest concerns over too direct involvement by IP rights holders in setting internal policy. End Note.)

112. (U) Some participants suggested that the IP courts should create special rules of procedure to avoid duplicating the problems in regular courts. Specifically, participants called for continuous hearings for cases and the elimination of interlocutory appeals; steps were needed to reduce the use of delaying tactics that now discourage prosecution. Attorney Joshua Lapuz, representing the Supreme Court Office of Public Information, said that special rules may be possible and he advised interested parties to make these recommendations to the Supreme Court (which administers the court system in the RP). Lapuz noted that no additional legislation would be required to streamline the new IP courts. Cristobal initially expressed reluctance to pressure the courts on procedural issues and emphasized that these issues should be left to the courts to decide.

113. (SBU) Cristobal later privately asked if the USG and possibly other countries would weigh in with the Supreme Court to encourage streamlined procedures for new IP courts. Emboff promised to sound out USG colleagues on this point and review our experience here with judicial reforms, but noted that it would probably be easier to initiate streamlining measures prior to setting up the courts. These measures might include "technical changes" such as the elimination of interlocutory appeals (which permit endless objections by plaintiffs to even trivial matters in order to bring the pace of prosecution to a virtual halt). Cristobal expressed interest but made no commitment.

Wrap-up

114. (SBU) In a concluding session involving Embassy officers and private sector representatives, participants gave mixed reviews to the GRP's efforts on IPR. Some expressed the view that, if the GRP continues on its current trajectory, the USG should seriously consider removing the RP from the Special 301 Priority Watch List. Others said that such a move is premature, claiming that the GRP still needs to prove its long-term commitment to continued improvement of IPR protection. Participants also discussed several ways to increase public awareness of IPR issues and mobilize greater public support for IPO initiatives. Many of the represented firms are interested in collaborating with IPO to plan public information campaigns. The US-ASEAN Business Council in its planned October visit as well as other business groups may also urge President Arroyo to express her strong support for greater IPR protection in order to add momentum to IPO efforts in upcoming meetings and further empower IPO, OMB, and others.

COMMENT

¶15. (SBU) As expected, the roundtable discussion focused on problems with the judicial system in which prosecution of IPR cases remains problematic. There was a consensus among participants that the new IP courts offer an opportunity to expedite the prosecution of IPR cases, but effective training and other support will be critical to make these courts effective. Stakeholders may lobby for special court procedures to avoid duplicating the delays seen in regular courts. It is unclear whether the Supreme Court will be receptive to this suggestion. Most company representatives seemed resigned to the fact that prosecutions will continue to be the major obstacle to improved IPR protection in the RP and remained skeptical about prospects for further progress with prosecutions.

¶16. (SBU) Embassy received positive feedback from participants regarding the usefulness of the discussion. Cristobal complained, with good humor, that we had put him on the "hot seat," but also said it was useful for him to see the breadth of interests represented at the table. The discussion focused mostly on the big IPR interests: entertainment, software, books, and medicines. Some representative from other industries, such as the apparel and IT industries, told econoffs that they felt "overwhelmed" by the magnitude of the concerns they had heard in comparison to their own issues. However, they confirmed that IPR infringement is rapidly growing in their industries and must be addressed. Embassy plans to facilitate discussions between GRP officials and representatives of these other groups in a series of smaller roundtables focused on some of the industries that are often pushed aside in the IPR debate. Showing that IPR is more than music, movies and "Microsoft" is crucial to the creation of an enduring respect for and valuing of IPR in the Philippines.

JOHNSON